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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)

Reliance Communications, Inc.)
(Filer ID. 823168))

and)

Reliance Communications)
International, Inc.)
(Filer ID. 825316))

WC Docket No. 06-122

Emergency Request for Review of)
Decision of Universal Service)
Administrative Company and Request)
for Waiver of 45-Day Revision)
Deadline)

**EMERGENCY REQUEST FOR REVIEW AND
REQUEST FOR WAIVER OF USAC 45-DAY REVISION DEADLINE**

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Universal Service Administrative)	
Company and Request for Waiver of)	
45-Day Revision Deadline)	
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**EMERGENCY REQUEST FOR REVIEW AND
REQUEST FOR WAIVER OF USAC 45-DAY REVISION DEADLINE**

Pursuant to Section 54.719(c) of the Commission’s rules, 47 C.F.R. §54.719(c), Reliance Communications, Inc. (“RCI”) (Filer ID. 823168) and its wholly-owned subsidiary Reliance Communications International, Inc. (“RCII”) (Filer ID. 825316) request the following: (i) review and reversal of the decision issued by the Universal Service Administration Company (“USAC”) on April 28, 2010,¹ rejecting the revised “August 1, 2009” FCC Form 499Q submitted by RCI on January 25, 2010, and (ii) review and reversal of the Universal Service Fund (“USF”) contributions and related

¹ Letter from USAC to Michael Sauer of Reliance Communications Inc. dated April 28, 2010 (attached hereto as Attachment 1).

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penalties and interest levied on RCII as a result of calculations of the companies' USF obligations based on a clerical error contained in the original August 1, 2009, 499Q submitted by RCI (the "Resulting Debt"). The former request is, in effect, a request for a waiver of the 45-day revision deadline that is applicable to Form 499Q filings.² The latter request is, in effect, a request to suspend the further transfer of, and initiation of proceedings to collect on, the Resulting Debt pending the outcome of this appeal and, ultimately, a request to cancel the Resulting Debt. RCI and RCII further request that the Commission provide the foregoing relief on an expedited basis so that further interest and penalties are not imposed on RCII as a result of developments that originated with a minor, innocent clerical error on the part of its affiliate RCI. The companies believe the extenuating circumstances of this case, as described herein, provide ample good cause for the Commission to grant the requested relief.

I. Summary

Waiver of the 45-day revision period and reversal of USAC's decision to reject RCI's revised August 1, 2009, 499Q report is warranted for three reasons. First, neither RCI nor RCII was aware of, and therefore could not have remedied, the clerical error contained in RCI's original August 1, 2009, 499Q report within the 45-day revision period. It was such error that led USAC to treat RCII as ineligible for the international revenue exemption and assess USF contributions on RCII's international as well as

² *Federal-State Board on Universal Service; Request for Revision by ABS-CBN Telecom North America Inc., et. al*, Order, 22 FCC Rcd. 4965, ¶ 8, (Wireline Comp. Bur. 2007). See also *Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, Order, 23 FCC Rcd. 10096 (Wireline Comp. Bur. 2008) ("*Aventure Order*").

interstate revenue. RCII did not become aware that a problem existed until it received an October 2009 invoice from USAC that assessed USF contributions in an amount that represented a 9,857% increase over the contribution amount that was assessed in the previous quarter and a 15,833% increase from what it had expected to be assessed for the fourth quarter of 2009. Furthermore, RCII had no reason to believe that the enormous increase was caused by a minor clerical error in its affiliate's August 1, 2009, 499Q report until it was informed of such by USAC in January 2010.

Second, waiver of the 45-day revision deadline in this case will not cause harm to the USF because RCII has already fulfilled its actual contribution requirements for 2009. As discussed further below, the FCC Form 499A reports submitted by RCII and its affiliates on April 1, 2010, demonstrate that they continue to qualify for the international revenue exemption. The 499A report submitted by RCII on April 1, 2010, demonstrates that RCII's USF contribution obligation for 2009 was less than \$[REDACTED]. By the end of the third quarter of 2009, RCII had already made more than \$[REDACTED] of USF contribution payments to USAC.

Finally, payment of the \$[REDACTED] USF contribution assessed on RCII for the fourth quarter of 2009 and the associated interest and penalties that have accrued would impose a financial hardship that RCII simply cannot bear.

II. Introduction and Background

RCII offers a retail virtual calling card service that allows subscribers to place international calls. RCI is a wholesale carrier that serves RCII as well as other U.S. and foreign telecommunications carriers. Both companies provide international and/or interstate private line services from time to time.

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RCII has a direct interest in USAC's decision to reject the revised August 1, 2009, 499Q report submitted by RCI because the clerical error that RCI sought to correct in its revised submission caused RCII and its affiliates to exceed the international revenue exemption threshold established in Section 54.706(c). 47 C.F.R. §54.706(c). This error led USAC to assess USF contributions on RCII's projected interstate and international revenue as reported in RCII's August 1, 2009, 499Q report, thereby resulting in an enormous increase in RCII's USF contribution requirements for the fourth quarter of 2009.³ RCII has also been assessed thousands of dollars in interest and penalties as an indirect result of the clerical error that RCI sought to correct in its revised submission.

III. Statement of Facts

RCII began providing telecommunications services in the United States in May 2004, and filed its first FCC Form 499A in March 2005. (See Declaration of Siddharth Kothari attached hereto as Attachment 2, at 1 (hereinafter "Kothari Declaration").) RCI, which began providing service in the U.S. in April 2003, filed its first FCC Form 499A report in April 2004. (Kothari Declaration at 2.) Due to the fact that both companies derive the vast majority of their respective revenue from the provision of international services, the companies have qualified for the international revenue exemption established in Section 54.706(c) of the Commission's rules. 47 C.F.R. §54.706(c). Indeed, for a number of years, neither company's USF contribution obligation exceeded the *de minimis* threshold established in Section 54.708. 47 C.F.R. §54.708. It was not

³ Prior to this occurrence, RCII had never been assessed federal USF charges on its international revenue, either because it was exempt from federal USF contributions altogether due to the *de minimis* exception or because RCI, RCII and their affiliates qualified for the international revenue exemption due to the overwhelming international nature of their consolidated revenue.

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until 2006 that RCII exceeded the *de minimis* threshold and made a contribution payment to the USF. (See Attachment 3; see Kothari Declaration at 2.) Despite exceeding the *de minimis* threshold, RCII continued to qualify for the international revenue exemption because its interstate revenue, when combined with that of RCI, did not exceed 12% of the two companies' combined interstate and international revenue. As a result, RCII's USF contributions were based solely on its limited interstate revenue. (See Kothari Declaration at 2.)

In October 2009, however, RCII received an invoice from USAC assessing a monthly contribution amount of \$[REDACTED]. (See Attachment 4) This monthly amount represented one third of \$[REDACTED], the contribution amount assessed to RCII for the fourth quarter of 2009), which, in turn, represented a 9,857% increase from its previous quarter's USF contribution. (See *id.* at 2.) RCII has no record of receiving any advance warning that such an enormous increase in its USF contributions was forthcoming or the basis for such increase. (Kothari Declaration at 2.)

Prior to receiving the October 2009 invoice, RCII had been assessed and paid the following USF contribution amounts for the first three quarters of 2009, (see Attachment 5):

Billing Month	Monthly USF Assessment	DATE PAID
January-09	\$ [REDACTED]	February 6, 2009
March-09 ⁴	\$ [REDACTED]	March 26, 2009
April-09	\$ [REDACTED]	April 29, 2009
May-09	\$ [REDACTED]	May 27, 2009
June-09	\$ [REDACTED]	June 29, 2009
July-09	\$ [REDACTED]	July 27, 2009 ⁵

⁴ RCII did not owe any amount in February 2009 because its account included a credit of \$[REDACTED]. (See Attachment 5.)

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August-09	\$ [REDACTED]	August 24, 2009
September-09	\$ [REDACTED]	September 24, 2009
Total Paid to USAC	\$ [REDACTED]	

Based on the Form 499A report that RCII filed on April 1, 2010 (reporting calendar year 2009 revenues), its actual USF contribution obligation for all of 2009 was \$ [REDACTED]. (See Attachment 6.) Therefore, RCII had already paid in excess of its actual USF contribution obligation by the end of the third quarter of 2009.

In reviewing the October 2009 USAC invoice, RCII was able to determine that USAC had calculated the \$ [REDACTED] contribution amount based on RCII's projected interstate and international revenue as reported in its August 1, 2009, 499Q report. In its August 1, 2009, 499Q report, RCII reported \$ [REDACTED] of projected interstate revenue and \$ [REDACTED] of projected international revenue for the fourth quarter of 2009. (See Attachment 7.) The calculation summary provided with USAC's October 22, 2009, invoice indicates that the FCC contribution factor was applied against the entire \$ [REDACTED] and not merely the projected interstate revenue of \$ [REDACTED]. (See Attachment 4 at 2.) Given the fact that (i) RCII had never been assessed USF contributions on its international revenue before and (ii) its forecasted business was fundamentally unchanged, RCII believed the calculation was made in error and that the charge would be removed in the November invoice. (See Kothari Declaration at 2-3.)

In November 2009, RCII received another invoice from USAC assessing yet an additional monthly contribution amount of \$ [REDACTED]. (See Attachment 8.) The

⁵ During the third quarter of 2009, RCII received a credit for USF overpayments made in calendar year 2008; therefore, its actual remittances were less than its calculated USF contributions for each month.

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November invoice also informed RCII that the October invoice remained outstanding and therefore was delinquent. At this point, RCII realized that, because the October and November invoices from USAC applied the FCC contribution factor against both its interstate and international revenues, USAC was treating RCII as if it were not eligible for the international revenue exemption. Hence, RCII reviewed all of the 499Q reports that it had filed in 2009 to determine whether it had misstated its revenue in some fashion. It was only when its own 2009 499Q reports appeared to be in order that RCII began to consider the possibility that perhaps the problem lay with the 499Q reports of its affiliates. (Kothari Declaration at 3.)

In December 2009 and early January 2010, RCII requested its outside counsel to conduct an exhaustive review of the 499A and 499Q reports filed by its affiliates Reliance Globalcom Services, Inc. (“RGSI”) (Filer ID. 823022) and Vanco US LLC (“Vanco”) (Filer ID. 822998) over the preceding year. (Kothari Declaration at 3.) Initially, RCII believed that its loss of the international revenue exemption was due to the inclusion of these two newly-acquired affiliates in the RCI/RCII group (collectively, with RGSI and Vanco the “Reliance Group”). After much analysis, however, it was determined that neither RGSI’s nor Vanco’s revenues would have caused the Reliance Group to lose the international revenue exemption.

As the mystery continued, RCII’s counsel contacted USAC in January to determine why RCII’s international revenue had been included in its contribution base for purposes of determining its fourth quarter 2009 USF contribution obligations. (Declaration of Petra A. Vorwig (hereinafter “Vorwig Declaration”), attached hereto as Attachment 9, at 1.) Based on this conversation, it was finally determined that RCII’s

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parent, RCI, had made a clerical error in its August 1, 2009, 499Q report and failed to report any projected revenue in line 120.⁶ (See Attachment 10; see also Vorwig Declaration at 2.) As a result, when USAC conducted the international revenue exemption calculation for all of the Reliance Group companies, RCI's interstate and international revenue were projected as \$0 when, in fact, they should have been projected as \$[REDACTED] and \$[REDACTED], respectively. The inadvertent omission of RCI's revenue caused the Reliance Group companies' final interstate revenue percentage to exceed the international revenue exemption threshold of 12%. (See Vorwig Declaration at 2.) Upon learning of this error, RCI filed a revised August 1, 2009, 499Q on January 25, 2010, reporting its projected revenue for the fourth quarter of 2009. (See Attachment 11.)⁷

Once the revised August 1, 2009, 499Q report was filed by RCI, RCII believed that it was only a matter of time before USAC processed the revised report and reversed the contribution amounts that it had assessed RCII for the fourth quarter of 2009. (Kothari Declaration at 3.) This belief was based on the fact that the projected revenue reported by RCI, when combined with its affiliates, would demonstrate that the international revenue exemption still applied to all of the Reliance Group companies. (Id.) In the meantime, however, RCII continued to receive invoices indicating that the amounts assessed for the fourth quarter of 2009 remained outstanding and that interest

⁶ RCI also has no record of ever receiving any notice from USAC that the projected revenue it reported in its August 1, 2009, 499Q report was substantially different from that reported in its previous 499Q reports (i.e., \$0 rather than [REDACTED]).

⁷ RCI recognized that the 45-day period for revising the August 1, 2009, 499Q report had passed but believed that, because (i) it had not received any notice and thus was completely unaware of the error during such period, and (ii) the revised report included higher revenue amounts than had been reported previously, such revised report would be accepted.

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and penalties on those amounts were continuing to accrue. (See Attachment 12.)

Additionally, USAC's March 22, 2010, invoice indicated that \$ [REDACTED] had been transferred to the FCC for collection. (See Attachment 13.)

On April 1, 2010, each of the four companies in the Reliance Group filed a Form 499A reporting its calendar year 2009 revenues. (See Attachments 6, 14, 15, 16.) The combined revenue for these four companies demonstrates that the international revenue exemption continues to apply and none of the companies should have been assessed USF contributions on their 2009 international revenue. The relevant calculation is provided at Attachment 17.

On April 22, 2010, RCII received another invoice from USAC indicating that the fourth quarter assessments remained outstanding, additional interest and penalties had been assessed and an additional \$ [REDACTED] had been transferred to the FCC for collection. (See Attachment 18.) On April 28, 2010, after having received no response to RCI's revised August 1, 2009, 499Q report filed on January 25, 2010, but continuing to receive USAC invoices with ever higher amounts, RCII's counsel contacted USAC to discuss the amounts that had been transferred to the FCC and inquire why RCII's fourth quarter 2009 contribution amounts had not been reversed and continued to accrue interest and penalties. (See Vorwig Declaration at 2.) It was during that conversation that USAC indicated for the first time that RCI's revised August 1, 2009, 499Q had been rejected because it was filed outside of the 45-day revision period (even though RCI was not even aware during such 45-day period that an error had been made) and because it would result in a downward adjustment to the USF contributions assessed to its affiliates,

namely RCII.⁸ Because USAC rejected RCI's revised August 1, 2009, 499Q, report was rejected, it did not revise its international revenue exemption calculation for the Reliance Group companies and did not recalculate RCII's contribution base for the fourth quarter of 2009 to exclude its international revenue. As a result, USAC's records continued to show that RCII owed \$ [REDACTED] in USF contributions for the fourth quarter of 2009, as well as accrued interest and penalties. As of the date of this filing, \$ [REDACTED] has been transferred to the FCC and \$ [REDACTED] remains on USAC's account.

IV. Questions Presented for Review

1. Should RCI be granted a waiver of the 45-day revision deadline when it did not become aware of the clerical error until well after such deadline and considering the unduly harsh and inequitable result that would ensue from a rigid application of such deadline?
2. Should the Commission reverse the \$ [REDACTED] USF contribution amount assessed by USAC on RCII for the fourth quarter of 2009 after RCI's revised August 1, 2009, 499Q and April 1, 2010, 499A reports demonstrate that the Reliance Group companies qualified for the international revenue exemption during such fourth quarter and throughout 2009?
3. Should the Commission reverse all interest and penalties that have accrued as a result of RCII's failure to pay the assessed USF contribution amount when the amount was more than 159 times the amount RCII should have been assessed had its affiliate not committed the clerical error and payment of the increased amount would have imposed substantial hardship on RCII?

V. Relief Sought

RCI and RCII pray that:

⁸ During the April 28, 2010, telephone conversation between USAC personnel and RCII counsel, USAC determined that it had failed to send a letter to RCI informing the company it was rejecting RCI's January 25, 2010 submission of its revised August 1, 2009, 499Q report. (Vorwig Declaration at 2.) Immediately after the call, USAC's legal counsel sent via email attaching a letter stating that the revised August 1, 2009, 499Q report had been rejected. (See Attachment 1; see also Vorwig Declaration at 2.)

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1. RCI be granted a waiver of the 45-day revision deadline with respect to the submission of its revised August 1, 2009, 499Q and reverse USAC's decision to reject the revised submission;
2. The USF contribution amount of \$ [REDACTED] assessed on RCII for the fourth quarter of 2009 be reversed; and
3. All interest and penalties assessed on RCII as a result of its failure to pay such 4Q 2009 USF contribution amount be reversed.

VI. Argument

The facts of this case warrant a waiver of the 45-day revision deadline and a reversal of the 4Q 2009 USF contribution amount and related interest and penalties that have been assessed on RCII because neither RCI nor RCII was even aware of the minor clerical error in RCI's August 1, 2009, 499Q that led RCII to appear to exceed the international revenue exemption threshold and, therefore, RCI could not have corrected the error within the 45-day revision period. Neither RCI nor RCII learned of RCI's clerical error until well after RCI's revision period had expired. Indeed, it was only after RCII began receiving USAC invoices for USF contribution amounts that were more than 99 times the amounts it had paid during the preceding quarter and more than 159 times what it had expected to be assessed for the fourth quarter of 2009 that the companies realized that something was greatly amiss.

Given the smallness of the clerical error that was committed and the enormity of the resulting assessment on RCII, RCII would have faced serious financial hardship had it been forced to pay a 9,857% increase in USF contributions. Instead, RCII and RCI sought to remedy the error via a filing by RCI of a revised August 1, 2009, 499Q that they learned only recently was rejected because of USAC's strict application of the 45-day revision deadline. RCI and RCII now seek relief from such strict application and request the Bureau to waive the 45-day revision deadline and reverse USAC's decision to

reject RCI's revised submission, and reverse the principal, interest and penalties that have been imposed on RCII as a result of the clerical error that RCI committed in its original August 1, 2009, 499Q.

Under the *2002 Interim Contribution Methodology Order*, USF contributors have up to 45 days after the 499Q report due date to correct their projected revenue.⁹ Furthermore, if a contributor fails to make payment on the due date of the monthly contribution, Section 54.713(b) of the Commission's rules authorizes USAC to assess "interest at a rate equal to the U.S. prime rate (in effect on the date of the delinquency) plus 3.5 percent, as well as administrative charges of collection and/or penalties and charges permitted by the applicable law" 47 C.F.R. §54.713(b). The Commission may waive these rules, however, for good cause shown. 47 C.F.R. §1.3. The Commission has indicated that waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁰ In addition, the Commission may consider, in its determination, hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ Such special circumstances and hardship are present here and support waiver of both the 45-day revision deadline and reversal of the principal, interest and penalties assessed against RCII.

⁹ *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. 24,952, ¶36 (2002) ("*2002 Interim Contribution Methodology Order*").

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). *Accord, NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver).

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

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A. RCI Was Unaware of Its Clerical Error and Therefore Could Not Have Corrected It Within the 45-Day Revision Period

In the third quarter of 2009, RCII's assessed USF contributions were only \$ [REDACTED] per month (see Attachment 5). When RCII received its October invoice reflecting a 9,857% increase in USF contributions, RCII was shocked and believed such an enormous increase must have been calculated in error. The projected revenue it had reported on its August 1, 2009, 499Q report should have resulted in a quarterly contribution amount of \$ [REDACTED],¹² rather than the \$ [REDACTED] that was actually assessed -- a 15,833% difference. (See Attachment 7.) It was only after it received a November invoice from USAC reflecting the same \$ [REDACTED] monthly contribution assessment that RCII realized that USAC had calculated a contribution amount of \$ [REDACTED] for the fourth quarter of 2009. (See Attachment 8.) Because its own 499Q report was correct, RCII was unable to understand why its assessment had increased so dramatically.

In January 2010, RCII learned, through a conversation with USAC, that the enormous increase in its fourth quarter USF assessment was caused by its affiliate RCI's inadvertent omission of projected revenue from line 120 of RCI's August 1, 2009, 499Q report. RCI had completed and submitted its August 1, 2009, 499Q report, but failed to carry the information reported down to line 120. (See Attachment 10.) Within days of its learning of the error, RCI filed a revised August 1, 2009, 499Q report reporting its

¹² RCII reported \$ [REDACTED] of projected interstate revenue in its August 2009 499Q. The USF contribution factor for the fourth quarter of 2009 was 12.3% and the circularity factor was 10.9737%. Public Notice, Proposed Fourth Quarter 2009 Universal Service Contribution Factor, DA 09-2042 (Sept. 14, 2009). Therefore, if RCI had included its projected revenue and the international revenue exemption had applied, RCII's contribution should have been \$ [REDACTED] (\$ [REDACTED] (\$ [REDACTED] x .123) less \$ [REDACTED] (\$ [REDACTED] x .109737)).

projected revenue; however, the 45-day revision period had already expired, prompting USAC to reject the revision. (See Attachment 11.)

Even if RCII had been able to deduce that its increased USF contribution assessment was the result of its affiliate's minor error before speaking with USAC in January, RCII had no reason to believe there was an error prior to its receipt of its first fourth quarter invoice from USAC in late October 2010 – over a month after the 45-day revision deadline had passed. (See Attachment 4.) Therefore, there was no way for RCII to recognize the error, or for RCI to remedy the error, within the 45-day revision period.

B. RCII Has Fulfilled its 2009 USF Obligations Already

On April 1, 2010, each of RCII and its affiliates RCI, RGSI, and Vanco filed 499A reports reporting their respective revenue for the 2009 calendar year. (Attachments 6, 14, 15, 16.) The international revenue exemption calculation based on those filings demonstrates that the companies' combined interstate revenue is less than 12% of the companies' combined interstate and international revenue.¹³ Thus, each company was responsible for USF contributions only on their interstate revenue. 47 C.F.R. §54.706(c). RCII's 499A report for calendar year 2009 indicates that RCII had only \$[REDACTED] of interstate revenue in 2009. (See Attachment 6.)

Under the *2002 Interim Contribution Order*, because the aggregate projected revenue RCII reported in its 499Q reports for calendar year 2009 exceeded the actual revenue reported in its 499A report, RCII's USF contribution should be calculated by multiplying the interstate revenue reported in its 499A report by the average of the two

¹³ See Attachment 17.

lowest contribution factors in 2009, which were 9.5% and 11.3%.¹⁴ Based on this calculation, RCII's USF contribution for calendar year 2009 is \$ [REDACTED] (\$ [REDACTED] x .104). As USAC notes in its letter of April 28, 2010, this true-up process remedies the specific error contained in RCI's August 1, 2009, 499Q and the resulting USF overcharge assessed to RCII. (Attachment 1 at 1.) Therefore, RCII is at least entitled to a reversal of the \$ [REDACTED] USF contribution amount it was assessed for the fourth quarter of 2009.

As demonstrated above, RCII remitted over \$ [REDACTED] in USF contributions to USAC during the first three quarters of 2009. Therefore, even though RCII did not pay the amounts contained in the USAC invoices for the fourth quarter of 2009 because such payments would have caused it undue hardship, it has already remitted more than it owes for calendar year 2009 based on its recent 499A report. As a result, the USF was not harmed in any way.

C. Payment of the Fourth Quarter 2009 Assessment and the Associated Interest and Penalties Would Have Imposed a Substantial Hardship on RCII

RCI was unable to pay the USF contribution amount assessed on it during the fourth quarter of 2009 without causing undue hardship to the company. As noted earlier, this amount represents a 9,857% increase from the amount it had been assessed during

¹⁴ 2002 *Interim Contribution Methodology Order* at ¶36 (2002) ("2002 *Interim Contribution Methodology Order*") ("If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499-A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year.") The contribution factor for the first quarter of 2009 was 9.5%, Public Notice, Proposed First Quarter 2009 Universal Contribution Factor, DA08-2706 (Dec. 15, 2008), and the contribution factor for the second quarter was 11.3%, Public Notice, Proposed Second Quarter 2009 Universal Service Contribution Factor, DA09-584 (Mar. 13, 2009).

the preceding quarter and a 15,833% increase from the amount it had expected to be assessed for the fourth quarter of 2009. Put another way, the amount assessed on RCII during the fourth quarter 2009 was over 159 times what it would have been charged had its affiliate not committed the clerical error. Instead of a monthly USF contribution amount of \$[REDACTED] based on its fourth quarter 2009 forecast of \$[REDACTED] in interstate revenue, RCII was faced with a monthly charge of \$[REDACTED] based on its fourth quarter 2009 forecast of \$[REDACTED] in interstate and international revenue. No business can plan for a contingency of this magnitude or be expected to absorb unexpected charges that are more than 159 times what it expected to pay without experiencing substantial hardship. To compound the situation, RCII has also been assessed thousands of dollars in interest and penalties. The total amount imposes a heavy financial burden on a company that, barring this unfortunate development, would be subject to less than \$[REDACTED] in USF contributions for 2009 as described above.

D. Waiver Is in the Public Interest and Will not Harm the USF

The Commission has previously granted a similar request to waive the 45-day revision deadline. On June 26, 2008, the Wireline Competition Bureau granted Adventure Communications Technologies, LLC's ("Adventure") request to waive the 45-day revision period and reverse USAC's decision rejecting Adventure's revised 499Q report.¹⁵ Adventure sought the waiver because it had incorrectly reported all of its projected revenue in line 120 of its November 1, 2007, 499Q report rather than limiting the amounts to its end-user revenue, resulting in a significant overstatement of its USF

¹⁵ *Adventure Order*, supra note 2.

contribution base.¹⁶ As with RCII, Adventure did not become aware of its mistake until it received its first invoice for the forecasted quarter (in Adventure's case the first quarter of 2008). In Adventure's case, its monthly contribution increased from \$4,700 to \$91,800.¹⁷ The Bureau granted the waiver because the error would require Adventure to pay contributions "nearly 20 times its actual obligation, causing undue hardship."¹⁸ Furthermore, without relief, Adventure would have been billed \$275,000 for the first quarter of 2008, which would not have been refunded until July of the following year after filing its 499A.¹⁹ While Adventure had paid the \$275,000 assessed based on the error, the Bureau directed USAC to treat Adventure's revised November 1, 2007, 499Q report as timely filed and to adjust Adventure's USF contribution obligations on a going-forward basis.²⁰

While RCII recognizes that such waivers will not be routinely granted,²¹ the circumstances leading to this request provide similar if not greater reason for such a waiver. First, where the Bureau found that Adventure's contributions increased by a factor of 20 and, as a result, constituted "undue hardship," RCII faced an increase by a factor of more than 159. Second, while RCII did not pay the invoiced amount as Adventure did, RCI had already paid more than its actual 2009 USF contribution by the end of the third

¹⁶ *Id.* at ¶2.

¹⁷ *Id.*

¹⁸ *Id.* at ¶5.

¹⁹ *Id.* at ¶6.

²⁰ *Id.* at ¶7.

²¹ *Id.*

quarter of 2009. Therefore, like Aventure, it had, in effect, pre-paid its required USF contribution for all of 2009.

As a result of the unique circumstances that led RCII to appear to exceed the international revenue exemption threshold for the fourth quarter of 2009 and the hardship RCII would face if forced to pay the resulting \$ [REDACTED] principal and related interest and penalties, the Commission should waive the 45-day revision deadline and reverse USAC's rejection of RCI's revised August 1, 2009, 499Q, and reverse the principal, interest and penalties assessed on RCII as a result of the minor clerical error contained in RCI's original August 1, 2009, 499Q report.

VII. Conclusion

For the foregoing reasons, RCI and RCII requests that the Bureau (i) waive the 45-day revision deadline and thereby reverse USAC's decision to reject RCI's revised August 1, 2009, 499Q report and (ii) reverse the USF contributions and related penalties and interest levied on RCII as a result of calculations of the companies' USF obligations based on the clerical error contained in RCI's original August 1, 2009, 499Q report.

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Respectfully submitted,

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ATTACHMENT 1



April 28, 2010

Attn: Michael Sauer
Reliance Communications, Inc.
380 Madison Avenue
21st Floor
New York, NY 10017

Form 499 Filer ID: 823168

RE: August 2009 FCC Form 499-Q Revision Rejection

Federal Communications Commission (FCC) regulations require carriers to file an FCC Form 499-A annually and an FCC Form 499-Q quarterly and require the Universal Service Administrative Company (USAC) to bill contributors based on reported revenues. See generally 47 C.F.R. Part 54. The August 2009 FCC Form 499-Q was due, with revisions due by (45 days later). This 45 day form revision window is clearly noted in the instructions for the FCC Form 499 Q, is discussed in a document entitled "Helpful Hints" that was included with the form, and is posted on USAC's website www.universalservice.org. In addition, questions concerning forms and revisions can be addressed to USAC via email at Form499@universalservice.org.

Because USAC received the August 2009 FCC Form 499-Q submitted by the above-referenced Form 499 Filer ID 823168 Reliance Communications, Inc. after the due date and outside of the 45-day revision window, the form was untimely and will not be processed.

If this submission was intended to revise revenue reported on a previously filed original Form 499-Q, please note USAC has relied upon the revenue previously projected by you for the purposes of calculating your universal service charges for October, November and December 2009. If you failed to timely file an original Form 499-Q, please note USAC has relied on revenue previously reported by you for the purpose of calculating your universal service charges for October, November and December 2009.

When a carrier fails to file an FCC Form 499 by the due date, in order to calculate universal service charges for the relevant period, FCC regulations require USAC to estimate that carrier's revenue based upon previously reported revenue information.

Please note that although you missed the revision window for submission of the Form 499-Q, the annual/quarterly (A/Q) true-up will provide a remedy. USAC's 2010 A/Q true-up will reconcile and revise contributor's account accordingly. The 2010 Form 499 A, reporting annual 2009 revenue, has a due date of April 1, 2010. Upon receipt of contributor's 2010 Form 499-A, USAC will perform the A/Q true-up and post appropriate credits or adjustments to your account.

If you wish to appeal this decision with USAC, your appeal must be postmarked no later than 60 days after the date of USAC's rejection letter. Appeals postmarked after 60 days from the date of this letter will be automatically dismissed.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Form 499-Q rejection letter and identify the outcome that you request.
- Be sure to refer to CC Docket No. 96-45 on all communication with the FCC.
- The appeal must identify the "Legal Reporting Name" and "Filer 499 ID".
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Explain the appeal to the USAC. Please provide documentation to support your appeal.

- Attach a photocopy of this Revised Form 499-Q Rejection decision that you are appealing.
- Mail your letter to:
Letter of Appeal
USAC
2000 L Street, NW, Suite 200
Washington, DC 20036
- **Appeals submitted by fax, telephone call, and e-mail will not be processed.**

The response will indicate whether USAC:

- Agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-Q Rejection Letter; or
- Disagrees with your letter of appeal, and the reasons therefore.

If you disagree with USAC's response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." Again, please note your appeal must be postmarked no later than 60 days after the date of the Appeal Decision. Appeals postmarked after 60 days from the date of USAC's response to your appeal will be automatically dismissed. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the decision at issue.

Appeals submitted via the United States Postal Service, should be sent to the address below (For security purposes, hand-delivered or messenger-delivered documents will not be accepted at this Washington, DC address):

Federal Communications Commission
Office of the Secretary
445 – 12th Street, SW
Room TW-A325
Washington, DC 20554

Documents sent by hand-delivery or messenger should be sent to the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

If you have questions or concerns regarding this letter, please contact USAC Customer Service at (888) 641-8722 Option 1, Option 2.

Sincerely,

USAC

REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 2

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Reliance Communications, Inc. ("RCI"))	
(Filer ID. 823168))	
)	
and)	
)	
Reliance Communications)	WC Docket No. 06-122
International, Inc. ("RCII"))	
(Filer ID. 825316))	
)	Declaration of Siddharth Kothari
Emergency Request for Review of)	
Decision of Universal Service)	
Administrative Company ("USAC"))	
and Request for Waiver of 45-Day)	
Revision Deadline)	
)	

I, Siddharth Kothari, state as follows:

1. I am the Finance Manager for both Reliance Communications International, Inc. (“RCII”) and Reliance Communications, Inc. (“RCI”).
2. This Declaration is made in support of RCII and RCI’s Emergency Request for Review of Decision of Universal Service Administrative Company (“USAC”) and Request for Waiver of 45-Day Revision Deadline.
3. RCII offers a retail virtual calling card service that allows subscribers to place international calls.
4. RCII began providing telecommunications services in the United States in May 2004, and filed its first FCC Form 499A in March 2005.

5. RCI is a wholesale carrier that serves RCII as well as other U.S. and foreign telecommunications carriers.
6. RCI, which began providing service in the U.S. in April 2003, filed its first FCC Form 499A report in April 2004.
7. Since RCI began filing 499As in 2003 and RCII began filing in April 2004, the companies have qualified for the international revenue exemption.
8. Additionally, it was not until 2006 that RCII exceeded the *de minimis* threshold and made a contribution to USF.
9. Despite exceeding the *de minimis* threshold, RCII continued to qualify for the international revenue exemption because its interstate revenue, when combined with that of RCI, did not exceed 12% of the two companies' combined interstate and international revenue.
10. As a result, prior to October 2009, RCII's monthly USF contributions were based solely on its limited interstate revenue.
11. Between January and September 2009, RCII was assessed and paid \$ in USF contributions to USAC.
12. In October 2009, RCII received an invoice from USAC assessing a monthly contribution amount of \$.
13. Prior to receiving the October 2009 monthly invoice from USAC, I have no recollection or record of receiving advanced warning that RCII's contribution amount would increase by 9,857% from the previous quarter.
14. Given the fact that (i) RCII had never been assessed USF contributions on its international revenue before and (ii) its forecasted business was fundamentally unchanged, we believed

the calculation was made in error and waited to see whether the charge would be removed in the November invoice.

15. When RCII received the November 2009 invoice from USAC, we realized that, because the October and November invoices from USAC applied the FCC contribution factor against both its interstate and international revenue, USAC was treating RCII as if it were not eligible for the international revenue exemption.
16. At that point, RCII reviewed all of the 499Q reports that had been filed in 2009 to determine whether it had misstated its revenue.
17. When all of RCII's 2009 499Q reports appeared to be in order, we began to consider the possibility that the problem lay with the 499Q reports of its affiliates.
18. In December 2009 and early January 2010, RCII requested its outside counsel to conduct an exhaustive review of the 499A and 499Q reports filed by its affiliates Reliance Globalcom Services, Inc. ("RGSI") and Vanco US LLC ("Vanco") over the preceding year.
19. Once RCII's outside counsel determined that its affiliate, RCI, had made a clerical error on its August 1, 2009, 499Q, RCI submitted a revised report on January 25, 2010.
20. Upon filing the revised August 1, 2009, 499Q report, we believed that it was only a matter of time before USAC processed the revised report and reversed the contribution amounts that it had assessed RCII for the fourth quarter of 2009.
21. This belief was based on the fact that the projected revenue reported by RCI, when combined with its affiliates, would demonstrate that the international revenue exemption still applied to all the Reliance Group companies.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 13th day of May, 2010.

A handwritten signature in black ink, appearing to read "Siddharth Kothari", written over a horizontal line.

Siddharth Kothari, Finance Manager

REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 3

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ATTACHMENT 4

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ATTACHMENT 5

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ATTACHMENT 6

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REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 7

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REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 8

[Redacted]

REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 9

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Reliance Communications, Inc. ("RCI"))	
(Filer ID. 823168))	
)	
and)	
)	
Reliance Communications)	WC Docket No. 06-122
International, Inc. ("RCII"))	
(Filer ID. 825316))	
)	
Emergency Request for Review of)	Declaration of Petra A. Vorwig
Decision of Universal Service)	
Administrative Company ("USAC"))	
and Request for Waiver of 45-Day)	
Revision Deadline)	
)	

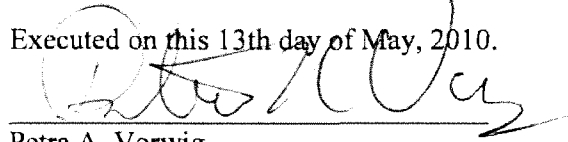
I, Petra A. Vorwig, state as follows:

1. I am the outside legal counsel for both Reliance Communications International, Inc. ("RCII") and Reliance Communications, Inc. ("RCI").
2. This Declaration is made in support of RCII and RCI's Emergency Request for Review of Decision of Universal Service Administrative Company ("USAC") and Request for Waiver of 45-Day Revision Deadline.
3. In early January, I contacted USAC to determine why RCII's international revenue had been included in the contribution base for purposes of determining its fourth quarter 2009 USF contribution obligations.

4. During that conversation, I learned that RCII's parent, RCI, had made a clerical error on its August 1, 2009, 499Q report and failed to report any projected revenue in line 120.
5. I further learned that, as a result, when USAC conducted the international revenue exemption calculation for all of the Reliance Group companies, RCI's interstate and international revenue was projected as \$0.
6. This inadvertent omission of RCI's revenue caused the Reliance Group companies' final interstate revenue percentage to exceed the international revenue exemption threshold of 12%.
7. On April 28, 2010, my colleague, Christopher Tai, and I spoke with Fred Theobald and Stefani Watterson of USAC to discuss the amounts that had been transferred to the FCC and inquire why RCII's fourth quarter 2009 contribution amounts had not been reversed and continued to accrue interest and penalties.
8. During that conversation, Mr. Theobald indicated that RCI's revised August 1, 2009, 499Q report had been rejected because it was filed outside of the 45-day revision period and would have resulted in a downward adjustment to the contributions assessed to its affiliates, namely RCII.
9. During the conversation, Mr. Theobald indicated that he had searched the related files and determined that USAC had failed to send a letter to RCI informing the company it was rejecting RCI's January 25, 2010 submission of its revised August 1, 2009, 499Q report.
10. Immediately after the call concluded, Ms. Watterson sent a letter to me and Mr. Tai via email attaching a letter stating that the revised August 1, 2009, 499Q report had been rejected.

I hereby declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 13th day of May, 2010.

A handwritten signature in black ink, appearing to read 'Petra A. Vorwig', is written over a horizontal line.

Petra A. Vorwig
Counsel to Reliance Communications International, Inc. and Reliance Communications,
Inc.

REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 10

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ATTACHMENT 11

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ATTACHMENT 12

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ATTACHMENT 17

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REDACTED –FOR PUBLIC INSPECTION

ATTACHMENT 18

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REDACTED –FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

On this 13th day of May, 2010, I certify that I served a copy of the foregoing by
First Class U.S. mail on the following:

Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, D.C. 20036

/s/
Petra A. Vorwig